

June 17, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket
No. 05-25, RM-10593**

Dear Ms. Dortch:

Over the past couple of months, representatives from WorldNet Telecommunications, Inc. (“WorldNet”) have met with a number of Commission staff to discuss the Commission’s currently proposed amendments to its copper retirement rules and related issues. As a follow-up to these meetings, WorldNet submits the following:

WorldNet continues to urge the Commission to reconsider its determination to keep ILEC copper retirements a purely notice-based process instead of establishing some kind of mechanism, option, and/or opportunity for Commission and/or state commission review and affirmative approval or rejection of such proposals. In short, the stakes are just too high to allow such a competition-impacting event take place without some kind of reasoned review and conscious resolution. Moreover, WorldNet has already in Puerto Rico experienced the incumbent power to control facilities availability as a wedge against competition, and it fears that failure to require affirmative approval would increase that risk in the copper retirement context.¹ Indeed, even if the inherent incentives and demonstrable proclivities for anti-competitive abuse were not a manifest reality (at least in Puerto Rico), there will still inevitably be situations in which the anti-competitive effects of a proposed copper retirement, by mere circumstance, demonstrably outweigh purported countervailing considerations. There needs to be some kind of check available when a proposed copper retirement has demonstrably more to do with thwarting or harming competition than in gaining any purported network efficiencies or advancing an IP transition. In short, it seems unavoidable that the proposal in the NPRM to leave a notice-only process for an ILEC to retire copper falls short of the Commission’s statutory mandate and stated proclamation in the NPRM to protect competition.

In WorldNet’s view, an affirmative review and approval requirement is not inconsistent with the urgings of other commenters who have requested greater notice periods. The issue is

¹ WorldNet’s previous meetings included questions about whether and how much the ILEC in Puerto Rico has been replacing copper loop facilities with fiber. In Attachment A to this follow-up letter, WorldNet includes a 2012 report of the ILEC’s “aggressive” efforts to roll-out and promote fiber to the home and fiber to the curb

who should have the burden -- the ILEC, to establish (consistent with virtually every other mechanism established by Congress in the Telecommunications Act of 1996) appropriate safeguards are in place and applicable competition protecting rules are complied with, or, the competitor, who inevitably (and certainly in Puerto Rico) is a much smaller company who would at that point have a "gun to its head" to stop what otherwise could by default go through as a competition impacting event. And it has been unrefuted throughout this docket that (a) WorldNet is a critical competitive entrant in Puerto Rico, (b) WorldNet has attained for the island all of the benefits competition was designed to afford, including innovation, better service, and price competition, (c) if the FCC does not act as requested by WorldNet through these fairly limited and modest proposals, competition in Puerto Rico will suffer, and (d) in turn, the entire economic development capacity of an already fragile economy in Puerto Rico will suffer too. Basic concepts of equity and fairness, combined with the Commission's stated commitment to preserving competition, dictate that the balance be tipped toward preserving competition, and in this case, requiring an affirmative approval for the retirement of copper. Simply put, failure to implement this competitive safeguard will hurt competition in Puerto Rico.

WorldNet continues to urge the Commission not to let the TDM-to-IP transition become the back door that will effectively enable ILECs to evade still-effective interconnection and unbundling requirements in the Telecommunications Act of 1996. It was the express and still-unchanged will of Congress in the 1996 Act that, notwithstanding the decades-old arguments about the imperilment of network investment incentives, requirements for ILEC to interconnect with their competitors on non-discriminatory terms and to lease to competitors, at cost-based rates, the basic elements of their networks are critically necessary to the creation and preservation of a competitive telecommunications market. Technologies may now be changing, but the market realities (especially in Puerto Rico) and the authority and clarity of how Congress resolved the same basic policy decisions and arguments presented in this proceeding have not. Whether an ILEC loop facility is copper, fiber, or a string between two cans, the unavoidable reality is that, in many cases (especially for the small- and medium-sized businesses that WorldNet primarily serves), that facility is still the only viable service pathway for effective competition. The plain will of Congress in the 1996 Act was for competitors to have access to such facilities. This will cannot and should not be allowed to be thwarted and the express requirements of federal law effectively gutted under the guise of a technology transition. WorldNet, accordingly, urges the Commission to do what it needs to do in this proceeding to preserve such access through the affirmative affirmation or extension of existing unbundling requirements, through the ability of competitors to acquire and/or use retired ILEC loop facilities on no less than just, reasonable, and nondiscriminatory terms (with disputes over such terms arbitrated and reviewed by the Commission and/or state commissions), or through other mechanisms. Again, simply put, failure to implement this competitive safeguard will hurt competition in Puerto Rico.

WorldNet also respectfully urges the Commission to reconsider its tentative conclusion in the NPRM to simply encourage the voluntary negotiation of arrangements that will enable competitors to acquire and/or use retired ILEC loop facilities. To begin with, an approach that leaves the sale/transfer of copper to a competitor to the full discretion of an ILEC is essentially creates a meaningless option. Congress understood this when it reflected in the 1996 Act that the relationship between ILECs and CLECs was not one in which the Commission could rely on ordinary market forces or promises of good faith to establish fair or reasonable rates, terms, or

conditions for an ILEC to provide a competitor access to network facilities. A backstop of required good faith and mandatory state commission arbitration was needed. It is no different here, especially in Puerto Rico where, almost twenty years after the 1996 Act was passed, WorldNet has been forced to litigate ILEC compliance with even the most basic provisions of the 1996 Act and Commission rules.

Additionally, WorldNet does not agree with apparent suggestion by some that a regulated copper sale/transfer mechanism is not really needed because a number in the CLEC community have not requested it or because it would be too complicated. To begin with, no one in the CLEC community that has submitted comments in this proceeding, other than WorldNet, does business in Puerto Rico, a jurisdiction with a notoriously languishing economy and a market in which the demand for copper-dependent, broadband technologies, like DSL, is much higher than in mainland jurisdictions. Simply put, copper is still (and probably will be for a good deal of time) a critical element in the deployment of IP solutions in Puerto Rico, unlike in much of the rest of the country.

Moreover, WorldNet does not agree with the notion that a sale/transfer of retired copper is prohibitively complex. In many cases, the most contentious issue in a transaction is price, and even AT&T has agreed with WorldNet that a sale is feasible and indeed appropriate, and, the proper price for the sale/transfer of retired copper should be salvage value. Beyond this, the primary concern expressed to WorldNet is the complexity of coordinating the use of facilities that share the same poles, conduits, and other infrastructure. Yet, telephone companies and utilities have been doing this for decades. WorldNet is not going to pretend that there may not be issues in establishing the terms of a sale/transfer of retired copper. The fact that there may be some challenges in establishing such terms, however, does not in any way make the task impossible or, in WorldNet's view, override the competitive importance of giving WorldNet the ability to continue to provide the copper-based broadband services that are still aligned to the service demands of many small- and medium-sized Puerto Rican businesses.²

WorldNet believes that the same core process delineated in the 1996 Act and corresponding rules would work here: a period for voluntary negotiation, followed by, a backstop of dispute resolution, presumably at the local level, to iron out any disputes. The goal would be for all or most issues to be negotiated, something that is demonstrably more likely if the parties know that a third party will resolve any issues they cannot.

WorldNet's consistent themes requesting affirmative approval of a copper retirement, as well as, a regulatory backstop to review any issues regarding a sale of copper, would also have the beneficial effect of permitting local Puerto Rico regulatory and stakeholder review. WorldNet has presented unrebutted information that Puerto Rico has some unique challenges. And more specifically, this Commission has found (and established precedent), in response to court directives, that ensuring local review on key competitive issues is appropriate if not necessary. See, e.g., Triennial Review Order (FCC 03-36) at Para. 7 ("Role of the States. The record before us and the D.C. Circuit's emphasis in USTA on granularity in making unbundling determinations both lead us to conclude that asking the states to take on some fact finding responsibilities would

² WorldNet has already provided to the Commission two proposals to effectuate transfers of retired ILEC copper. For convenience, WorldNet now provides these proposals again in Attachment B.

be the most reasonable way to implement the statutory goals for certain network elements. We find that giving the state this role is most appropriate where, in our judgment, the record before us does not contain sufficiently granular information and the states are better positioned than we are to gather and assess the necessary information") and Paras. 328-340.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David Begay", with a stylized flourish at the end.

David Begay
Founder and CEO

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ATTACHMENT A

Claro deploys direct-to-home fiber optic network

Written by [Michelle Kantrow](#) // October 5, 2012 // [Telecommunications/Technology](http://newsismybusiness.com/claro-deploys-direct-to-home-fiber-optic-network/)
<http://newsismybusiness.com/claro-deploys-direct-to-home-fiber-optic-network/>

Claro de Puerto Rico announced Thursday the deployment of fiber optic infrastructure that will enable it to offer consumers broadband Internet in speeds of up to 50 megabits per second. The fiber-to-the-home and fiber-to-the-curb initiatives carry an investment of \$150 million, which the company began last year, company officials said.

To spur the adoption of the technology becomes, Claro will offer aggressive pricing and bonus to customers who migrate their numbers to the carrier.

“Claro once again leads the charge in the island’s technological advancement by investing in advanced infrastructure such as fiber to deliver a modern ‘super highway’ to Puerto Rico homes,” Claro President Enrique Ortíz de Montellano. “In this way we enable access to all the advanced services that require high bandwidth and stability while we offer the best prices.”

The network is already available in several areas of San Juan, Guaynabo, Caguas, Fajardo, Humacao and Mayagüez, where speeds reach the promised 50 Mbps. In other parts of the island, speeds fluctuate between one and 30 Mbps, while Claro continues its network expansion into highly populated areas, urban zones, as well as new housing and building projects.

Since taking over Claro, parent company América Móvil has spent an average of \$250 million a year in infrastructure projects, Ortiz de Montellano told News is my Business Thursday.

By Christmas, the company expects to have available its much-anticipated Internet Protocol Television service as well as the first phase of its Long-Term Evolution platform. IPTV has been some three years in the making, during which the company has been defending itself before the Telecommunications Regulatory Board and several courts against other telecom and cable service providers that raised concerns about the potential competitive harm of allowing the carrier to deploy islandwide paid television service.

But in February, it was awarded its cable franchise license and several weeks ago was cleared in court to move on with its project.

As for LTE, in May, América Móvil officials confirmed the upcoming deployment, which would put Claro on the same playing field as AT&T de Puerto Rico, T-Mobile and Open Mobile. With LTE, mobile phone customers are able to access faster transmission speeds for broadband and other services. Given that there are roughly 3.2 million mobile phones in use in Puerto Rico, carriers have said LTE will contribute toward bridging the island’s significant digital divide.

ATTACHMENT B

ILEC Proposed to Retire Copper

Two Options when a CLEC is Interested (At ILEC's Discretion)

Option 1

ILEC transfer of assets to CLEC(s)

- ILEC wants to retire cable along entire distribution or feeder route
 - ILECs presumably have strong reasons for moving away from owning and operating copper cable (*i.e.*, cost of maintaining copper exceeds value)
 - Rebuttable presumption of negative net salvage value (cost of removal exceeds salvage, or scrap, value of copper)
- CLEC(s) take full ownership of cable, including operating and maintaining

Option 2

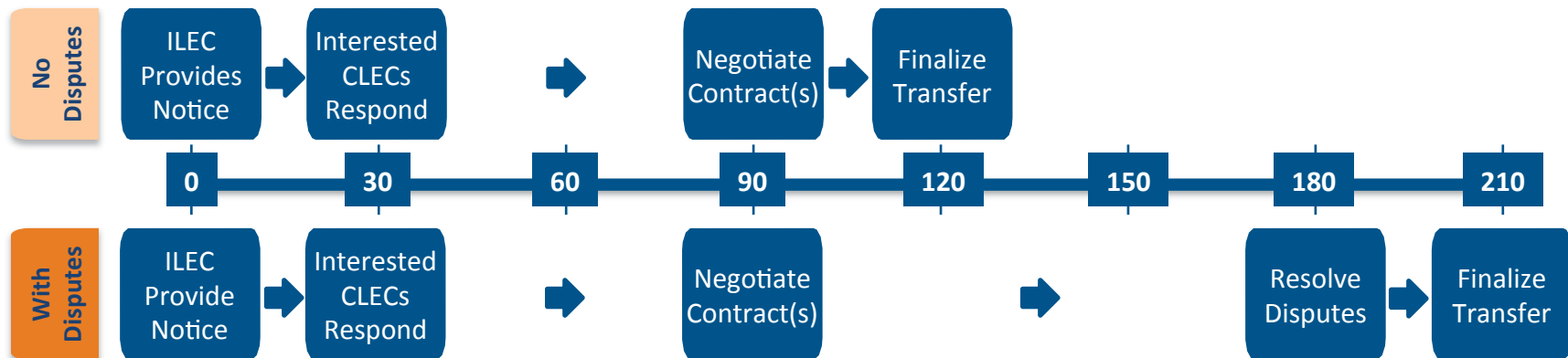
Indefeasible Right of Use (IRU)

- ILEC wants to avoid maintaining two networks
- IRU allows a positive revenue stream for ILEC without ongoing maintenance expenses
 - Copper UNE leased at TELRIC return on investment rate, excluding administrative and operations costs (such as maintenance, repair, etc.)
 - CLEC(s) take full responsibility for operating and maintaining cable

ILEC Proposed to Retire Copper

Scenario 1: Transfer of Assets

Process & Timing



Transfer of Assets

Terms and Conditions of Transfer

General Terms & Conditions

- Rebuttal presumption of zero cost (negative net salvage)
- ILECs retire cable along entire distribution or feeder route
- Existing interconnection remains
 - Interconnection facilities (terminations) at TELRIC
- Facilities are accepted "as-is" with no warranties
- All post-transfer maintenance and liabilities assumed by CLEC(s)
- Multiple CLECs may join together and share ownership
- Post-closing 90 day transition period
- Sets forth responsibilities of both parties during the transition period
- Includes ongoing operational issues (maintenance, air pressure, etc.)

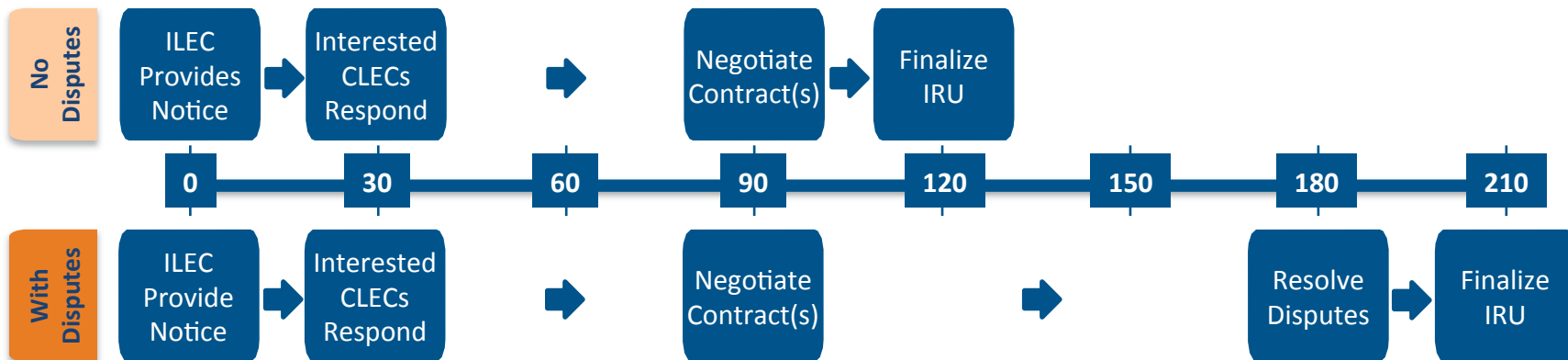
Access to Rights-of-Way

- Nondiscriminatory Access to:
 - Poles
 - Ducts
 - Conduits
 - Rights-of-Way
- Typically under existing agreements

ILEC Proposed to Retire Copper

Scenario 2: Indefeasible Right of Use (IRU)

Process & Timing



Indefeasible Right of Use

Terms and Conditions of Transfer

General Terms & Conditions

- CLECs pay ILECs the TELRIC return on copper loops investment
 - Excludes repair, maintenance, operations, administration, etc.
- Existing interconnection remains
- Facilities are accepted "as-is" with no warranties
- All maintenance and post-transfer liabilities assumed by CLEC(s)
- CLECs enter into joint maintenance agreement
- Post-closing 90 day transition period
- Sets forth responsibilities of both parties during the transition period
- Includes ongoing operational issues (maintenance, air pressure, etc.)

Access to Rights-of-Way

- Nondiscriminatory Access to:
 - Poles
 - Ducts
 - Conduits
 - Rights-of-Way
- Typically under existing agreements